furthermore declares the same exception must apply in the exercise of the right to petition for a pardon or a writ of habeas corpus, and to defend himself when sued by his creditors or others,[9] else such rights are rendered an absolute nullity. In reaching this broad conclusion the court relied in part upon the ancient and obsolete status of *civiliter mortuus,* concerning those persons who had abjured the realm, entered religion and become professed, attainted for treason or the commission of a felony, and the various related penalties, equally unknown to our law, such as attainder, corruption of blood, forfeiture and escheat, to which there are many exceptions, and substantially concluded that exceptions always have existed, and always must exist when the law attempts to deal with a living man as if he were dead.[10] But it seems that the matter of contract under the California statutes is not thus involved in the peculiar meaning of *civiliter mortuus* at common law and under the provisions of the various states. Not only does the code declare, in effect, that convicts are to be deemed civilly dead, according to the proper meaning of that term, but that such persons are expressly incapacitated from the making of contracts. Perhaps exceptions are necessarily to be recognized, not only in getting a parole but in managing one's property and contracting for the better enjoyment of the fruits of one's labor and the necessities of life while on parole. Indeed, the few cases upon the subject have treated the matter quite liberally, for, as is shown in the principal case, any other construction would be contrary to the spirit of our fundamental laws.[11] But what then becomes of the meaning of the words used in the statutes and the spirit of the system of codified law?

M. C. B.

CONFLICT OF LAWS: ACTION BY FOREIGN ADMINISTRATOR FOR WRONGFUL DEATH.—The leading case of Kansas Pacific Railroad Company v. Cutler[1] holds that an administrator appointed in another state can maintain an action to recover in Kansas for the death there of a resident of such other state. The decision on this set of facts seems well settled and represents the weight of authority.

But suppose in the above case that the decedent were domiciled in Kansas and that no administrator had been appointed there.

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[9] It is held by the weight of authority that a convict may be sued and his goods levied upon, as his incapacity to sue does not affect the rights of other persons, 9 Cyc. 874; Gray v. Gray (1904), 104 Mo. App. 520, 79 S. W. 505; Estate of Nerac (1868), 35 Cal. 392, 95 Am. Dec. 111; Coffee v. Haynes (1899), 124 Cal. 561, 57 Pac. 482.

[10] See Pollock and Maitland, "History of English Law", vol. 1, p. 435, for an account of the difficulties of regarding a monk as civilly dead. Also see authorities above cited in note 3.

[11] See Kenyon v. Saunders et al. (1894), 18 R. I. 590, 30 Atl., 470, 26 L. R. A. 232; Rankin v. Rankin (1828), 22 Ky. 531, 17 Am. Dec. 161; Stephani v. Lent (1900), 63 N. Y. Supp. 471.

[1] (1876), 16 Kans. 568.

Could an administrator duly appointed in Nebraska sue in Kansas for the wrongful death of such decedent? This situation, upon which there seems to have been no previous adjudication, was presented to the Supreme Court of Kansas last January in *Metrakos v. Kansas City, Mexico and Orient Railway Company.*[2] The court summarily stated that the action would not lie.

The problem in the Metrakos case resolves itself merely into this: whether the fact that the plaintiff is an ancillary, instead of a domiciliary administrator in Nebraska, determines the plaintiff's right of action one way or the other?

Of course if the claim for damages were assets of the decendent's estate, there would have to be a local administration in Kansas for the protection of creditors there. But a claim for damages for the wrongful death of a person is a statutory, not a common law action, since at the common law a tort action died with the person; and therefore the provision in such statutes giving the damages recovered to the next of kin, wholly withdraws such claims from the estate of the decendent.[3] In this view of the matter it seems immaterial whether the decedent was domiciled in Kansas or not, for in either case no injury is done creditors in Kansas. J. C .A.

CONSTITUTIONAL LAW: REGULATION OF CREMATORIES UNDER THE POLICE POWER: AESTHETIC PRINCIPLES.—In *Abbey Land and Improvement Company et al. v. County of San Mateo,*[1] the Supreme Court of California stated that the right to regulate cemeteries under the police power "is placed on the ground that they may endanger life or health by corrupting the surrounding atmosphere, or the waters of wells, or springs and streams in the vicinity, by reason of emanations from the bodies in process of decay",[2] and so concluded that like conditions must exist to sustain the regulation of crematories. And the court, in deciding that crematories could not be arbitrarily limited to one for each township, not only took judicial notice that the operation of a crematory is safe and sanitary for the living, but suggests that they could not be prohibited "on the ground that they are not pleasant to the eye, or that they are not agreeable subjects of contemplation, or they are a source of annoyance to nervous or superstitious persons, or that they make the vicinity less attractive for a dwelling place, or for business, and thereby lessen the value of adjoining lands." A similar doctrine was announced in a former decision when the court refused to uphold a bill-board ordinance on aesthetic considerations.[3]

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[2] (Jan 10, 1914), 137 Pac. 953.

[3] Perry v. St. Joseph and W. R. Co. (1883), 29 Kans. 420.

[1] (Mar. 19, 1914), 47 Cal. Dec. 407, 139 Pac. 1068.

[2] Hume v. Laurel Hill Cemetery et al. (C. C., N. D. Cal., 1905), 142 Fed. 552; Laurel Hill Cemetery v. City of San Francisco (1907), 152 Cal. 464, 93 Pac. 70; Dillon's Mun. Corp, 5th ed., vol. II, § 682.

[3] See Varney & Green v. Williams (1909), 155 Cal. 318, 100 Pac. 867, 21 L. R. A. (N. S.) 741.